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SENATE

REPORT
99-79

# AUTHORIZING APPROPRIATIONS FOR FISCAL YEAR 1986 FOR INTELLIGENCE ACTIVITIES OF THE U.S. GOVERNMENT, THE INTELLIGENCE COMMUNITY STAFF, THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM [CIARDS], AND FOR OTHER PURPOSES

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JUNE 11 (legislative day, JUNE 3), 1985.—Ordered to be printed

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Mr. DURENBERGER, from the Select Committee on Intelligence, submitted the following

## REPORT

[To accompany S. 1271]

The Select Committee on Intelligence, having considered the original bill (S. 1271) authorizing appropriations for fiscal year 1986 for intelligence activities of the U.S. Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE BILL

This bill would:

(1) Authorize appropriations for fiscal year 1986 for (a) intelligence activities of the United States, (b) the Intelligence Community Staff, and (c) the CIA Retirement and Disability System;

(2) Authorize the personnel ceilings as of September 30, 1986 for (a) the Central Intelligence Agency, (b) the Intelligence Community Staff, and (c) the other intelligence activities of the U.S. Government;

(3) Authorize the Director of Central Intelligence to make certain personnel ceiling adjustments when necessary to the performance of important intelligence functions;

(4) Make several legislative changes designed to enhance intelligence and counterintelligence capabilities and to promote the more effective and efficient conduct of intelligence and counterintelligence activities.

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## OVERALL SUMMARY OF COMMITTEE ACTION

[In millions of dollars]

| | Fiscal year 1985 | Fiscal year 1986 budget request | Committee recommends | Committee recommended changes |
|---|---|---|---|---|
| Intelligence activities | | | | |
| Intelligence Community Staff | $21.0 | $21.9 | $22.3 | +$0.4 |
| CIARDS | 99.3 | 101.4 | 101.4 | 0 |
| Total | | | | |

### THE CLASSIFIED SUPPLEMENT TO THE COMMITTEE REPORT

The classified nature of U.S. intelligence activities prevents the Committee from disclosing the details of its budgetary recommendations in this Report.

The Committee has prepared a classified supplement to the Report, which describes the full scope and intent of its action. The Committee intends that the classified supplement, although not available to the public, will have the full force of a Senate Report, and that the Intelligence Community will comply fully with the limitations, guidelines, directions, and recommendations contained therein.

The classified supplement to the Committee Report is available for review by any Member of the Senate, subject to the provisions of Senate Resolution 400 of the 94th Congress.

### SCOPE OF COMMITTEE REVIEW

The Committee conducted a detailed review of the Intelligence Community's fiscal year 1986 budget request. This included:

—Hearings involving some 25 hours of testimony, which included the Director of Central Intelligence, the principal program managers, and senior officials from the Department of Defense, the Department of State, and the FBI;

—Detailed examination of over 3,000 pages of budget justification material;

—Review of written answers from the Intelligence Community to several hundred questions for the record;

—Numerous briefings and interviews with officials on major topics of interest.

The Committee examined the U.S. intelligence system through a combination of functional and component program reviews. In-depth hearings were conducted to examine key initiatives in programs involving: technical and human collection; counterintelligence; defense intelligence activities; and covert action. The Committee also held a detailed hearing on the subject of intelligence targets, including: the Soviet Union, counterterrorism, and arms control monitoring.

During the course of its review, the Committee focused on the following major areas:

—Key challenges facing the Intelligence Community over the longer term to include countermeasures to U.S. technical collection, improved methods of monitoring arms control agree-

ments, and growing requirements for intelligence on a global basis;
—The ability of the Community to meet these challenges, major upgrades required, and the adequacy of outyear plans;
—Major gaps in current and programmed capabilities;
—Steps proposed in the FY 1986 budget to overcome existing deficiencies and to improve the Community's long term performance; and
—Efforts by the Community to improve counterterrorism capabilities.

### Committee Findings and Recommendations

By the late 1970's, resource constraints and the effects of inflation had seriously degraded the Intelligence Community's capability to adequately support U.S. foreign policymaking objectives. Additional funding, beginning in the late 1970's and continuing through fiscal year 1985, improved that situation significantly. Major investments have been continued in the fiscal year 1986 budget to sustain development of advanced collection systems, expand human source collection abroad, improve analysis, enhance counterintelligence and counterterrorism capabilities, and modernize the support apparatus upon which all intelligence capabilities depend.

The Committee believes that the enhancement of U.S. intelligence capabilities must remain among the nation's highest priorities. The Committee has consistently supported major investments, proposed over the past few years, needed to ensure that the Intelligence Community can successfully respond to the challenges U.S. foreign policymakers are likely to face in the late 1980's and into the 1990's. This assessment has not changed, because no lessening of tension with our principal adversaries is expected. Simultaneously, developments in Third World countries, combined with issues of global significance, will continue to grow in importance.

### Two-Year Budget Cycle

The Committee believes it is important that Congress consider a two year cycle for authorization and appropriation of funds for the Intelligence Community. The Armed Services Committee recently adopted a provision in the Department of Defense Authorization Act for Fiscal Year 1986 (section 909 of S. 1160) which requires the President to submit a two year defense budget beginning in fiscal year 1988. This will require coordination between the Secretary of Defense and the Director of Central Intelligence as to their respective budgets.

The burdens of the annual budget process have become too cumbersome, both for the Intelligence Community and the Congress. Virtually all aspects of the intelligence and defense budgets are now subject to annual authorizations. There are dozens of procurement programs and hundreds of research and development programs. Reviewing each program in detail every year is providing more and more time consuming. Forcing all programs into an annual review also is unnecessarily disruptive. More important, however, by using its time to review virtually every line item in

the budget, both the Congress and the Intelligence Community forego opportunities to focus on more fundamental issues of intelligence policy.

There is widespread consensus on the desirability of a two year cycle. The Secretary of Defense repeatedly has endorsed the idea and indicated his willingness to cooperate to achieve it. The Temporary Select Committee to Study the Senate Committee System endorsed the concept of the two year budget cycle.

Although there is widespread consensus on its desirability, no one has outlined the specific details that need to be analyzed in order to accomplish this change. In particular, there may be certain unique items in the intelligence budget area that should not be handled on a two year basis. However, the move to a two year budget is a step in the right direction. In order to fully assess the implications of a two year budget and to insure adequate coordination with the Secretary of Defense as he prepares his report on the two year budget concept, the Director of Central Intelligence is directed to coordinate with the Secretary of Defense to submit either a separate report or an annex to the Defense report by July 1, 1986 on:

(1) The advantages and disadvantages of operating the Intelligence Community on a two year budget cycle;

(2) How the Intelligence Community would plan to convert to a two year budget cycle; and

(3) A description of any impediments, statutory or otherwise, to converting the operations of the Intelligence Community to a two year budget cycle beginning with fiscal year 1988.

## Section-by-Section Analysis

### TITLE I—INTELLIGENCE ACTIVITIES

Section 101 lists the department and agencies for whose intelligence activities the bill authorizes appropriations for fiscal year 1986.

Section 102 makes clear that, with the exception of sections 201, 201(a), and 301, the amounts authorized to be appropriated and the personnel ceilings established by the bill for fiscal year 1986 are contained in a classified Schedule of Authorizations. This Schedule of Authorizations is incorporated into the bill by this section.

Section 103 provides that no funds may be appropriated or otherwise made available for any intelligence activity unless the funds are specifically authorized or the appropriate Congressional committees have been given notice of the intent to make the funds available. The Committee intends that specifically authorized intelligence activities be considered as those activities described in annual budget justification material as modified by the Congress. The notification requirement is not intended to apply to reprogrammings below agreed-to dollar thresholds, releases from authorized contingency funds, or the Economy Act transactions for specific activities otherwise authorized by law. In the case of items of specific congressional interest, however, notice would be required. Notification required under this section normally should be made at least 15 days prior to completion of the funding transaction, but

it is recognized that circumstances may occasionally require later notification.

Section 103 also provides that transfers or reprogrammings that trigger the notification requirement must always be for a higher priority program. This stipulation restates the most important requirement for all reprogrammings or transfers. A further proviso is that in no event may funds be reprogrammed or transferred to support a program denied with prejudice by the Congress. This also is a longstanding limitation, but it is not meant to prohibit the reprogramming or transfer of funds to support an activity materially different from that previously denied.

Although section 103 does not constitute a statutory notification requirement with respect to releases from the CIA's Reserve for Contingencies, the Committee expects the Agency to continue to adhere to the longstanding practice of providing such notification when a request for a reserve is made to the Office of Management and Budget. Releases from the Reserve for Contingencies are not to be used to fund programs denied with prejudice by the Congress, but such releases may be employed if the activity to be supported is materially different from that previously denied.

Should questions arise as to circumstances in which prior notification of an activity would appear to be required by section 103, but in which prior notification would not be required by section 501 of the National Security Act of 1947, it is expected that resolution will be guided by the principles of comity and mutual understanding set forth in the legislative history accompanying the statutory intelligence oversight provisions enacted in 1980, and that the procedures governing reporting to the Senate Select Committee on Intelligence on covert action, agreed to by the Director of Central Intelligence and the Chairman and Vice Chairman of the Committee on June 6, 1984 as a means of better discharging the respective responsibilities of the executive and legislative branches under those provisions, will be strictly adhered to.

Section 104 permits the Director of Central Intelligence to authorize the personnel strength of any intelligence element to exceed its fiscal year 1986 authorized personnel level by no more than 2 percent if he determines that doing so is necessary for the performance of important intelligence functions. The Director must notify the two intelligence committees promptly of any exercise of authority under the section.

It is to be emphasized that the authority conveyed by this section is not intended to permit the wholesale raising of personnel strength in each or any intelligence component. Rather, the section provides the Director of Central Intelligence with flexibility to adjust personnel end strength temporarily for contingencies and for overages caused by an imbalance between hiring of new employees and attrition of current employees for retirement, resignation, etc. The Committee does not expect the Director of Central Intelligence to allow heads of intelligence components to plan to exceed personnel levels set in the schedule of authorizations except for the satisfaction of clearly identified hiring needs which are consistent with the authorizations of personnel strengths in this bill. In no case is the authority in section 104 to be used to provide for positions denied by the Congress.

Section 105 authorizes the National Security Agency to secure the design and construction of a research and engineering facility at its Fort Meade Headquarters compound. The Agency's research and engineering needs have outgrown current spaces, whose dispersed locations and other inadequacies impede effective management of this critical function. The Committee is pursuaded that it will be significantly less costly to build the required facility than to lease comparable space with the special characteristics that NSA needs for its research and engineering work. The Committee intends that the facility authorized by section 105 include all appropriate special structural, equipment, and security features.

Section 105 authorizes the design and construction of the entire facility. Use of a single continuous contract to accomplish completion of the building is explicitly authorized, and the Secretary of Defense is authorized to contract for design and construction in advance of appropriations therefor. The Committee expects to authorize funds for the project incrementally over a three fiscal year period. Accordingly, appropriations for fiscal year 1986 are authorized only for $21,364,000. The Committee strongly recommends that funds appropriated for the project in fiscal year 1986 and succeeding fiscal years remain available for use until the project is completed.

## TITLE II—INTELLIGENCE COMMUNITY STAFF

Section 201 authorizes the appropriation of $22,283,000 for the Intelligence Community Staff, which provides the Director of Central Intelligence with staff assistance to carry out his Intelligence Community responsibilities. The Staff supports the DCI in the execution of his responsibilities to develop, review, and approve the National Foreign Intelligence Program budget, to evaluate the performance of foreign intelligence activities, and to develop issues, goals, and other required guidelines for the Intelligence Community.

The request from the Intelligence Community Staff was in the amount of $21,900,000. This budget request incorporated the President's proposed 5 percent civilian pay cut, which would be effective January 1, 1986. Congressional action on the President's proposal is not yet final, but the Committee anticipates that Congress will eventually approve a pay freeze rather than a pay cut. Accordingly, the Committee has incorporated an increase of $383,000 for the Intelligence Community Staff.

Sections 202 and 203 provide certain administrative authorities for the Intelligence Community Staff. Section 202(a) authorizes 233 full-time personnel for staff as of September 30, 1986. The Intelligence Community Staff is composed of a permanent cadre, detailed community personnel, and contract hirees.

The Intelligence Community Staff is now made up of personnel who are permanent employees of the Staff and others who are detailed for several years from various intelligence elements. The purpose of section 202(b) is to authorize this staff approach and to require that detailed employees represent all appropriate elements of the Government.

Section 202(c) requires that personnel be detailed on a reimbursable basis except for temporary situations. The Staff's authorized size, in the opinion of the Committee, is sufficient for the duties which the Staff performs. This provision is intended to insure that its ranks are not swelled by detailees, the personnel costs for whom are not reimbursed to their parent agency.

Section 203 provides that the Director of Central Intelligence shall use certain authority to manage the activities and to pay the personnel of the Intelligence Community Staff. However, it is the Committee's intent that in the case of detailed personnel, the DCI's authority to discharge personnel shall only extend to discharging detailed personnel from service at the Intelligence Community Staff and not from Federal employment or military service.

INTELLIGENCE COMMUNITY STAFF

| | Millions | Full-time personnel |
|---|---|---|
| Fiscal year: | | |
| 1985 program | $21.0 | 207 |
| 1986 request | 21.9 | 233 |
| Committee recommended change | .4 | 0 |
| Committee recommendations | $23.3 | 233 |

## TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Section 301 authorizes appropriation for the Central Intelligence Agency Retirement and Disability System (CIARDS) in the amount of $101,400,000 for fiscal year 1986. The Central Intelligence Agency Retirement Act of 1964 for Certain Employees (Public Law 88-643) authorized the establishment of CIARDS for a limited number of Agency employees and authorized the establishment and maintenance of a fund from which benefits would be paid to qualified beneficiaries.

The benefits structure of CIARDS is essentially the same as for the Civil Service Retirement System, with several special provisions. These special CIARDS provisions are: (a) annuities based upon a straight 2 percent of high 3-year average salary for each year of service, not exceeding 35; (b) under stipulated conditions a participant may retire with the consent of the Director, or at his direction be retired at age 50 with 20 years of service, or a participant with 25 years of service may be retired by the Director regardless of age; and (c) retirement is mandatory at age 65 for personnel receiving compensation at the rate of GS-18 or above, and at age 60 for personnel receiving compensation at a rate less than GS-18, except that the Director may, in the public interest, extend service up to 5 years.

Annuities to beneficiaries are provided exclusively from the CIARDS fund, which is maintained through: (a) contributions, currently at the rate of 7 percent, deducted from basic salaries of participants; (b) matching Agency (employer) contributions from the appropriations from which salaries are paid, based on the actual

rate of contributions received from participants; (c) transfers from the Civil Service Retirement and Disability Fund representing employee and matching employer contributions for service of Agency employees prior to the date of their participant in CIARDS, and contributions for service of integrated Agency employees included in CIARDS following termination of integrated status; (d) income on investments in U.S. Government securities; and (e) beginning in 1977, direct appropriations consistent with the provisions of Public Law 94-552.

*Central Intelligence Agency retirement and disability system*

| | *Millions* |
|---|---|
| Fiscal year: | |
| 1985 program | $99.3 |
| 1986 request | 101.4 |
| Committee recommended change | 0 |
| Committee recommendation | 101.4 |

TITLE IV—GENERAL PROVISIONS

Section 401 provides that the authorization of appropriations by the fiscal year 1986 Intelligence Authorization Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

Section 402 provides advance authorization for such additional appropriations as may be necessary for any increases in Federal employee compensation and benefits which are authorized by current or subsequently enacted law during fiscal year 1986. Section 402 obviates the necessity for separate authorizations for such matters during the fiscal year.

TITLE V—FACILITATING NATURALIZATION OF CERTAIN FOREIGN INTELLIGENCE SOURCES

Section 501 amends section 316 of the Immigration and Nationality Act (8 U.S.C. 1427) to improve the ability of the United States to obtain foreign intelligence by authorizing the waiver of three requirements for naturalization for certain persons who have made extraordinary contributions to the national security or to the conduct of U.S. intelligence activities. The requirements are general residency and physical presence, the additional waiting period imposed on members of certain organizations, and the requirement that the naturalization petition be filed in the court which has jurisdiction over the petitioner's place of residence.

The Congress has established a number of conditions on the granting of United States citizenship. These are set forth in Chapter 2 of Title III of the Immigration and Nationality Act, 8 U.S.C. 1421 et seq. The Congress has recognized, however, that when necessary to other governmental interests, certain of these requirements should be modified of waived entirely. Nevertheless, there remain some requirements of the Immigration and Nationality Act which prevent complete recognition of extraordinary contributions to the national security or to the conduct of U.S. intelligence activities, and which limit the ability of the United States to recruit po-

tential foreign intelligence sources. The amendment in section 501 seeks to remedy this situation by addressing three requirements which currently stand in the way of expeditious naturalization of individuals making such contributions. Under the amendment, waivers would be authorized in recognition of extraordinary contributions to the United States and of the fact that the character and quality of service to the United States by certain individuals demonstrates that there is no need for them to serve a probationary period of residence to prove their fitness for citizenship.

The waivers authorized by new subsection 315(g) of the Immigration and Nationality Act are limited in nature. They would become operative only after the requisite finding by the Director of Central Intelligence (DCI), the Attorney General, and the Commissioner of the Immigration Service (INS). Waivers would be authorized only for three specific requirements for naturalization. Individuals granted such waivers would have to comply with all other naturalization requirements.

*Residence and physical presence*

Section 316 of the Immigration and Nationality Act sets forth the residency and physical presence requirements which must be met by a petitioner. The establishment of these residency requirements reflects a determination by the Congress that such probationary periods are necessary in order for a petitioner to demonstrate his fitness for citizenship. Nevertheless, the Congress has also determined that for certain classes of petitioners these requirements are neither necessary not appropriate. Thus, the Congress has determined that in certain cases the service which an individual has rendered to the United States demonstrates his fitness to become a citizen and merits expedited consideration. Among the classes of persons afforded such special treatment under the Immigration and Nationality Act in recognition of their service to the United States are: individuals employed overseas by the United States Government, an American corporation engaged in the development of foreign trade or commerce, or an American institution of research (§ 316(b)); employees of the United States Government employed abroad (§ 316(c)); merchant seamen on United States flag ships (§ 330), and; persons who have served in the Armed Forces of the United States (§ 328 and 329).

It also is clear that one of the classes of persons which the Congress has determined merits special consideration under the immigration and naturalization laws for their service to the United States are persons who have contributed to the national security. This determination is embodied in section 7 of the Central Intelligence Agency Act of 1949, 50 U.S.C. 403h. Section 7 permits the immediate admission of a limited number of persons to permanent resident alient status if the DCI, the Attorney General, and the Commissioner of INS determine that such admission would be "in the interest of national security or essential to the furtherance of the national intelligence mission."

The Congress also has recognized that there must be some flexibility concerning naturalization of such persons. Accordingly, in subsection (c) of section 316 of the Immigration and Nationality Act, the Congress has relaxed certain residency requirements for

the naturalization of persons who are employed by or contractors of the Central Intelligence Agency. In the case of Victor Ivanovich Belenko, the Soviet Air Force pilot who defected to the West, the Congress enacted special legislation waiving residency requirements for naturalization as well as the impediments to naturalization imposed by Mr. Belenko's prior membership in the Communist Party and the requirement as to the place of filing his petition. (Private Law 96-62; see Senate Report 96-963).

The private bill procedure, however, lacks sufficient security and certainty to serve as a complete solution to the problem of appropriately recognizing extraordinary contributions to the national security of the United States. A private bill reveals that an individual who has made such a contribution is in the United States, and its consideration by the Congress requires extensive dissemination of information, possibly including classified information, concerning the merits of the initiative.

Consideration of a private bill would entail explaining the individual's contribution and why it merits expeditious naturalization. This may be impossible, in certain cases, because sometimes even the slightest publicity would jeopardize the individual's security and could diminish the value of information or other services provided to the United States. This is particularly true when the United States is taking affirmative measures to conceal an individual's identity or the nature of his contribution to intelligence activities.

In addition, the outcome of the private bill procedure is not predictable. Other legislative business or the timing of the bill may result in its failure to pass for reasons wholly unrelated to its merits. The hit-or-miss nature of the private bill procedure prevents U.S. intelligence from offering the prospect of expedited citizenship to attract key foreign sources to service for the United States, because U.S. intelligence cannot now offer expedited citizenship with confidence that this inducement can actually be fulfilled when the time comes. Current law thus limits the opportunity to stimulate future contributions to our national security by those who might be encouraged to cooperate with the United States on account of the availability of a smooth and swift transition to U.S. citizenship.

The amendment made by section 501 will provide the United States with the ability to offer the inducement of expedited naturalization to potential foreign intelligence sources. This will aid in the efforts of our intelligence services to recruit sources with access to information that may be vital to the national security of the United States.

New paragraph 316(g)(1) establishes a regular method of recognizing the importance of services rendered to the United States by certain individuals, by permitting the Director of Central Intelligence, the Attorney General and Commissioner to waive the residency and physical presence requirements of section 316 in appropriate cases. This waiver would recognize the contributions of these individuals by allowing them to petition immediately for naturalization without having to endure an unnecessary probationary period. The individuals who would benefit from the proposed

waiver authority would already have demonstrated their fitness to become citizens and their commitment to the United States.

Paragraph (g)(1) is consistent with the existing structure of the naturalization laws, which already permit the waiver of these requirements for other classes of individuals who have rendered special service to the United States. Further, it builds upon the Congressional recognition, embodied in Section 7 of the Central Intelligence Agency Act of 1949, subsection (c) of Section 316, and the Belenko legislation, that the requirements of the immigration and nationality laws should be flexible in application to persons who make a substantial contribution to the national security or to the national intelligence mission.

*Membership in prohibited organizations*

Section 313 of the Immigration and Nationality Act, 8 U.S.C. 1424, prohibits the naturalization of individuals who are members of certain prohibited organizations or who espouse certain political ideologies. Its principal thrust is directed against persons who are members of Communist parties in any of their various forms worldwide, in effect barring them from naturalization.

Subsection 313(c), however, provides an exception to this general exclusion. It permits petitioners who otherwise would be barred by Section 313 to petition for naturalization provided that, at the time of petitioning, more than ten years have elapsed since termination of their membership in the prohibited organization. This is, in effect, a ten year probationary period for former members of the Communist Party, during which they must demonstrate that they have shed their attachment to the Party, its principles and goals, and are otherwise fit for citizenship.

Section 313 imposes special difficulties vis-a-vis United States intelligence activities, in that some of the most important contributions to those activities have been made by individuals who were members of the Communist Party. Indeed, their ability to contribute to the national security of the United States may have hinged directly on their Communist Party membership. New paragraph 316(g)(1) would permit waiver of this ten year bar for persons who have made significant contributions to the national security or to the conduct of U.S. intelligence activities.

As with the residency requirements of Section 316, the probationary period established by Section 313(c) is not needed in the case of these individuals. People of good character in hostile countries who risk their lives and livelihood to provide vital intelligence to the United States will have proved their fitness for citizenship by that service. A foreign intelligence source whose actions contribute substantially to the security of the United States merits special consideration.

*Residence within the jurisdiction*

Section 316(a) of the Immigration and Nationality Act, 8 U.S.C. 1427(a), taken together with other sections of that Act, requires a petitioner to file his petition for naturalization in the court which has jurisdiction over his place of residence. In effect, this means that the petitioner must file in the State in which he spends the last six months of required State residency.

Waiver of the physical presence and residency requirements of Section 316 would be ineffective in practice without a waiver of this procedural requirement. Petitioners benefiting from a waiver of the physical presence and residency requirements most likely will not have a permanent place of residence at the time of filing their petitions; hence, there will be no court with jurisdiction over the place of residence. Section 328 of the Immigration and Nationality Act is illustrative in this regard. In Section 328 the Congress waived the physical presence and residency requirements on the basis of service in the armed forces, and the requirement for residence within the jurisdiction has been waived as well.

A waiver of the Section 316(a) requirement for individuals who have made extraordinary contributions to the national security or to the conduct of U.S. intelligence activities also follows from the circumstances of individuals involved. Not only might they lack established residences, but it may be inadvisable for the United States, for reasons of security, to have the petition filed at a particular location.

*Proceedings under this subsection*

Paragraph (g)(2), together with the last sentence of paragraph (g)(1), make it clear that a naturalization petition which arises under new subsection (g) may be filed in any district court. Paragraph (g)(2) also mandates that the naturalization proceeding and associated documentation be handled so as to insure the protection of intelligence sources, methods and activities from unauthorized disclosure.

As noted above, the petitioner in such cases often has not had the opportunity to establish residency in a particular location in the United States. In addition, security concerns and the interests of the governments may require that the individual reside in a particular place or not reside in other places. Accordingly, paragraph (g)(2) provides that a naturalization petition in such cases can be filed in any district court in the United States, and that such petitions are to be accepted for adjudication by the court in which they are filed.

Information involved in such naturalization proceedings will, by definition, be quite sensitive and realing of the national intelligence mission. All information necessary to the adjudication of the petition must, of course, be presented to the court. Yet, at the same time, information concerning intelligence sources, methods and activities must be protected from unauthorized disclosure. No particular procedure is required. It is left to the discretion of the court and the government to insure that appropriate procedures, e.g., sealing of the record, are utilized.

*Limitations and congressional notification requirements*

Paragraph (g)(3) provides that no more than fifteen naturalizations per fiscal year may take place pursuant to subsection 316(g). The Committee believes that in nearly all of the extraordinary cases in which the authority granted by subsection 316(g) will be used, the individual involved will have worked on behalf of the United States for a significant period of time under difficult circumstances. Paragraph (g)(3) provides for notice to the two Con-

gressional intelligence committees each time a determination is made to apply the provisions of subsection (g). Thus, the Committee expects to be notified when the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration have made the requisite determination to utilize the authority contained in paragraph (g)(1). No special form or content of notification has been specified, because detailed information on the circumstances of an individual case might be quite sensitive. The notification requirement does, however, require notice to the intelligence committees before final action by the responsible federal officials to inform the court that certain requirements for naturalization have been waived. This will permit the committees to obtain further information as required for effective oversight. The exact nature of the information that would be supplied in response to requests for further details would be agreed upon between the committees and the DCI on a case-by-case basis.

TITLE VI—ADMINISTRATIVE PROVISIONS

*Use of proceeds from Defense Department counterintelligence operations*

Section 601 provides to the military counterintelligence components of the Department of Defense the same statutory authority to use the proceeds of operations to offset expenses as has been provided to the FBI since 1979. It exempts military counterintelligence operations from the provisions of section 3302 of title 32, United States Code, which can be interpreted as requiring that funds paid by a foreign intelligence service to a counterintelligence double agent must be deposited in the Treasury. The established practice of the counterintelligence components of the Military Departments has been to use those funds to pay the expenses of their double agent operations.

In 1978 the Office of Legal Counsel in the Department of Justice rendered an opinion that the FBI was required to pay into the Treasury all the income generated by its undercover activities. This opinion did not specifically apply to the counterintelligence components of the Department of Defense. In the case of the FBI, legislation was needed to permit the Bureau to use the proceeds from its undercover operations to offset their expenses. The alternative was to appropriate additional funds to pay those expenses. Since 1979 the Congress has provided such legislation for the FBI in the annual Department of Justice appropriations bills. The Administration proposed permanent FBI legislation in 1983, but Congress has continued to address the issue on an annual basis.

The Defense Department's Office of General Counsel has advised DOD counterintelligence officials that the statutory requirement to pay income into the Treasury should apply to military counterintelligence double agent operations. Legislation thus is required to make clear that money paid by foreign intelligence services to military counterintelligence double agents can be used to defray operational expenses. Such usage is important to operational security, the maintenance of agent bona fides, and for compensating double agents for legitimate expenses associated with operational activity. Section 601 also will avoid having to use appropriated funds to pay

operational expenses that have previously been defrayed by using money paid to double agents by foreign intelligence services.

The authority provided by Section 601 will resolve this problem for fiscal year 1986. The Secretary of Defense could authorize use of proceeds from military counterintelligence double agent operations to offset necessary and reasonable expenses incurred in such operations without regard to the statute requiring payment into the Treasury. As soon as the net proceeds from any such operation are no longer necessary for its conduct, such proceeds would have to be deposited in the Treasury.

It is the intent of the Committee that the counterintelligence components of the Military Departments should continue their current fiscal practices with regard to the use of funds acquired in double agent operations. For this reason, the term "operation" in subsection (b) is not limited to the activities associated with a single double agent, but rather includes the activities of double agents having the same or closely related objectives. The counterintelligence component of each Service should continue to account for its expenditures authorized pursuant to this provision.

The Committee expects to be informed before any significant change in the use of proceeds to offset expenses, such as use of funds other than payments to double agents or expenditures for purposes other than double agent expenses.

The Committee believes that military counterintelligence double agent operations make a significant contribution to the defense of the United States against Soviet bloc and other foreign intelligence services. On April 16, 1985, an Army Sergeant who had been a double agent against the Soviet KGB for more than ten years testified before the Permanent Investigations Subcommittee of the Committee on Government Affairs. He described the pervasiveness of Soviet intelligence efforts against American military and government personnel. Over the course of the operation, the Sergeant received almost $25,000 from Soviet intelligence. This legislation will ensure that such finds continue to be available to defray the cost of these operations.

The counterintelligence components of the Military Departments are the Army Intelligence and Security Command, the Naval Investigative Service, and the Air Force Office of Special Investigations.

*Retirement benefits for certain Central Intelligence Agency employees serving in unhealthful areas*

Section 602 amends the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) to provide an additional retirement credit in lieu of a post differential for service by Agency employees at unhealthful posts. Section 817 of the Foreign Service Act of 1980 (22 U.S.C. 4057) provides participants in the Foreign Service Retirement and Disability System with the ability to elect an extra credit towards retirement in lieu of a post differential for service at an unhealthful post. Agency employees serving overseas at unhealthful posts live under the same arduous conditions as State Department employees. While subsection 4(b) of the CIA Act of 1949 authorizes the DCI by regulation to provide Agency employees with benefits and allowances compara-

ble to those paid to Foreign Service personnel, the legislative history of that provision does not indicate that Congress considered Foreign Service retirement entitlements to be "allowances and benefits" within the meaning of that subsection. Section 602 thus authorizes the DCI to designate from time to time, in consultation with the Secretary of State, a list of places which by reason of climatic or other extreme conditions are to be considered unhealthful posts. Section 602 permits Agency employees who are CIARDS participants in computing their length of service to elect to receive a retirement credit of one and a half years for each year of service at such posts in lieu of a post differential. It is to be emphasized that this additional retirement credit is to be used only in computing a CIARDS participant's length of service under Section 251, and is not to be added to or considered in computing the 60-month period of qualifying service required before an employee can participate in CIARDS. Under Section 602, in computing an employee's length of service at an unhealthful post, fractional months are to be considered as full months and regular leaves of absence are to be included in this computation. These computation methods are identical to those contained in section 817 of the Foreign Service Act of 1980.

*Compensation of Director and Deputy Director of Central Intelligence*

Section 603 adjusts the annual rates of basic pay for the positions of Director and Deputy Director of Central Intelligence. Section 5312 of Title 5, United States Code, currently lists fourteen positions which have an annual rate of basic pay at Level I of the Executive Schedule. Subsection 603(a) would add the Director of Central Intelligence to the list. Section 5313 of Title 5, United States Code, sets forth those positions which have an annual rate of basic pay at Level II of the Executive Schedule. The Director of Central Intelligence is presently included in this listing. Subsection 603(b) would change the listed position of Director of Central Intelligence to Deputy Director of Central Intelligence. Given the addition of the Deputy Director of Central Intelligence to the Executive Schedule Level II position listed in Section 5313, it becomes necessary to amend Section 5314 of Title 5, United States Code, to strike the Deputy Director of Central Intelligence from the positions listed as receiving an annual rate of basic pay at Level III of the Executive Schedule. Subsection 603(c) accomplishes this.

*Application of Foreign Missions Act to individuals on secondment to the United Nations Secretariat*

Section 604 is a provision included in the bill at the behest of Senator William Roth. Information available to the Select Committee indicates that approximately one-quarter of the Soviet nationals on the staff of the United Nations Secretariat are trained intelligence officers. Over the past fifteen years, four Soviet employees of the United Nations Secretariat have been arrested on espionage charges. Other have been expelled from the United States because of their intelligence activities.

One of the most important actions by the Congress in recent years to control Soviet and other foreign intelligence operations in the United States was the Foreign Missions Act of 1982, which au-

thorizes the State Department to limit travel, property acquisition, and other conditions for foreign officials in the United States. The aim of this law is to enforce the principle of reciprocity as a means to improve the treatment of U.S. officials abroad and to protect the national security. An amendment sponsored by Members of the Senate Select Committee on Intelligence specifically affirmed the importance of the objective of using the Act to enhance the U.S. Government's ability to deal with threats to the national security, such as espionage and other foreign intelligence operations.

The State Department has not used the authority provided by the Foreign Missions Act to place controls on employees of the United Nations Secretariat, despite the evidence that the Soviet Union and other foreign governments assign trained intelligence officers to these positions. To remedy this problem, the Select Committee has included as section 604 in the Intelligence Authorization Act for fiscal year 1986 an amendment offered in Committee by Senator William Roth. This amendment requires the Secretary of State to apply to all individuals who are on a secondment from their respective governments to the United Nations Secretariat any and all terms, limitations, restrictions, or conditions applicable to individuals pursuant to the Foreign Missions Act of 1982, as may from time to time be applied to members of the consulates, embassies, or missions to the United Nations of those respective governments in the United States, pursuant to the Foreign Missions Act.

The reference to "individuals who are on secondment" reflects the fact that U.N. Secretariat positions fall into two categories. Some are regular employees under full control of the Secretariat, while others are seconded to the Secretariat by their governments and thus have a degree of divided allegiance. The purpose of the amendment is to require that employees seconded to the Secretariat by their governments be treated in the same manner as diplomatic and consular officials of such governments in the United States. Soviet nationals and others who may be foreign intelligence officers are more likely to fall in this category.

Imposition of Foreign Missions Act requirements upon seconded Secretariat employees is fully consistent with U.S. obligations to the United Nations dating to the action of Congress in 1947 regarding the U.N. Headquarters Agreement. On November 21, 1947, the United States Representative to the United Nations, Warren R. Austin, exchanged Notes with the Secretary General of the United Nations bringing the Headquarters Agreement into effect. The U.S. Note informed the Secretary General that "the Government of the United States is prepared to apply the above-mentioned Headquarters Agreement subject to the provisions of Public Law 357."

Section 6 of Public Law 80–357, enacted in 1947 by the 80th Congress, states that "nothing in the [Headquarters] Agreement shall be construed as in any way diminishing, abridging or weakening the right of the U.S. to safeguard its own security. . . ." Section 6 further states that the Headquarters Agreement in no way denies the U.S. the right "completely to control the entrance of aliens into any territory of the U.S. other than the headquarters district and its immediate vicinity." Although the United States has not previously exercised its rights under Section 6 to limit activities such as travel and acquisition of real property by personnel covered by the

Headquarters Agreement, there is no question that the broad reservation of U.S. national security interests in Section 6 of Public Law 80-357 was a legal precondition to U.S. acceptance of the Headquarters Agreement. Therefore, conditions such as those which may be imposed pursuant to section 604 are wholly consistent with U.S. obligations under the Headquarters Agreement.

The application of the Foreign Missions Act to seconded U.N. Secretariat employees is also consistent with the intent of that Act. The State Department has already applied the Act to the missions of foreign governments to the United Nations, and employees of those governments who are seconded to the U.N. Secretariat should be treated in the same manner as employees of the U.N. Missions of those governments.

Finally, the Select Committee notes that former Ambassador Jeanne Kirkpatrick, who represented the United States at the United Nations during the period 1981-1985, has testified on this matter recently before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs. Ambassador Kirkpatrick explained the serious problem for FBI counterintelligence officials created by the presence of Soviet and other foreign intelligence officers in U.N. Secretariat positions. She urged that more vigorous action be taken by the U.S. government to control the activities of such U.N. personnel in the United States who are abusing the privileges granted to the United Nations. Senator Roth brought Ambassador Kirkpatrick's testimony to the attention of the Select Committee. The Committee has asked the FBI to submit a classified paper explaining the problems created by the use of U.N. Secretariat positions by foreign intelligence services and describing benefits to FBI counterintelligence that will result from applying Foreign Missions Act requirements to employees on secondment to the Secretariat.

### TITLE VII—DIPLOMATIC EQUIVALENCE AND RECIPROCITY WITH THE SOVIET UNION

Last year, the Committee favorably reported, and the Congress passed, Title VI of the Intelligence Authorization Act for Fiscal Year 1985 (Public Law 98-618) dealing with counterintelligence and official representation. Through this law, Congress expressed its sense that numbers and conditions (status, privileges and immunities, travel, accommodation, and facilities) of official representatives to the United States of "any foreign government that engages in intelligence activities within the United States harmful to the national security" should not exceed the respective numbers and circumstances applied in such countries to U.S. officials. The President was asked to report to the foreign relations and intelligence committees of the Congress each year on the numbers and conditions and any action taken with respect to them.

In its report accompanying the bill S. Rpt. 98-481, the Committee stated that the intent of this provision was "to provide bipartisan Congressional support for Executive branch efforts to strengthen U.S. counterintelligence capabilities by reducing disparities between the official representation in the U.S. foreign governments that engage in intelligence activities harmful to our national secu-

rity and U.S. official representation in such countries." The Committee indicated that current mechanisms would not necessarily lead toward reducing such disparities:

> The Foreign Missions Act does not regulate the number of official representatives of foreign governments in the U.S., nor does the Office of Foreign Missions play a direct role in determining the size of either foreign missions in the U.S. or U.S. missions abroad. The question of whether to set a goal of eliminating disparities in this area is a matter for high-level policy decision.

The Committee's report demonstrated that there was a direct connection between diplomatic reciprocity and national security in terms of "counterintelligence" capabilities—i.e., the ability of the United States government to resist hostile intelligence activities. On the one hand, the number of foreign officials in the United States from countries conducting such activities is of great concern due to the danger they pose of espionage within our country. On the other hand, the limited U.S. official representation and the practice of employing large numbers of local nationals abroad presents opportunities for foreign intelligence to breach the security of U.S. diplomatic facilities and operations.

In its report of last year, the Committee took note of an FBI estimate that some 40 percent of the official representatives of Soviet Bloc countries in the United States are intelligence officers. The Committee indicated that all forms of espionage had resulted, especially against national secrets and private technological data with military applications, and that the activities of foreign intelligence officers had done "severe and extensive damage to U.S. national security." The Committee also stated that even the enhanced counterintelligence capabilities encouraged and approved by Congress in recent years "will not be adequate to provide full coverage for these operations."

There are few indications that this situation has improved in the intervening year. There has been no significant decline in the number of officials from these countries resident in the United States. New cases and new information meanwhile countinue to reveal the extent of hostile intelligence activities in the United States. Arkady Shevchenko, the highest ranking Soviet defector to date, whose story was revealed last year, stated in his recent book that "nine out of twelve Soviets" under his supervision were intelligence "professionals."

The Committee also took particular note last year of the "substantial imbalance in the number of Soviet nationals permanently assigned to embassy and consulate positions in the United States, and the number of U.S. nationals permanently assigned to embassy and consulate positions in the Soviet Union." The situation has not changed meaningfully in this regard. The Soviets continue to have some 300 personnel at their diplomatic facilities here and the United States approximately 200 such personnel in the Soviet Union. About 220 Soviet and other foreign personnel are employed in our Embassy and consulates in the Soviet Union performing a wide range of clerical, administrative and service functions, while

the Soviets hire only a handful of Americans on a limited basis, primarily as language teachers.

Recent press accounts show the danger of employing Soviet and other foreign nationals in U.S. diplomatic facilities, particularly in countries like the Soviet Union which engage in hostile intelligence activities against the United States. The Committee notes, for example, the stories that have appeared concerning the systematic "bugging" of the U.S. Embassy in Moscow over a period of years through devices implanted in its typewriters. The Committee has determined that typrewriters and other pieces of office equipment have regularly been sent through ordinary freight channels to their destinations at U.S. facilities in the Soviet Union and that Soviet employees of our Embassy and consulates there are involved in their assignment and use by U.S. officials.

Since passage of the Foreign Missions Act and the Committee's action of last year, the Executive branch has begun to remedy the disparity between official representation by the United States and foreign countries, including the Soviet Union, which engage in intelligence activities harmful to our national security. Under the Foreign Missions Act of 1982, the State Department has begun to take steps to equalize the conditions of foreign diplomats in the United States with those of U.S. representatives in their countries. Reciprocal restrictions on the travel of such officials with the United States are especially helpful in assisting the FBI and other agencies with counterintelligence responsibilities to monitor their movements and activities.

The first annual report called for by subsection (b) of last year's provision on this subject is not due until one year after enactment of the Fiscal Year 1985 Intelligence Authorization Act, on November 8, 1985. The Committee has been informed that the Administration continues to be internally divided over how to respond to the sense of Congress expressed through last year's provision. It is considering ways to address the problem of disparities in representation between the U.S. and certain foreign countries, particularly the Soviet Union. The Secretary of State has the lead in developing a policy on behalf of the Administration that will be coordinated with other federal agencies that have diplomatic and intelligence missions. However, despite evidence that the Administration is at least discussing possible remedies, the Committee views the counterintelligence situation with respect to foreign officials in the United States and U.S. officials abroad as so serious that further action should be taken by Congress immediately to stimulate decisions and action by the Executive branch. The Committee has decided, therefore, to report favorably Title VII of the Intelligence Authorization Act for Fiscal Year 1986, proposed in Committee by Senators Leahy, Cohen, Bentsen, Hollings, McConnell, Boren and Hatch.

Upon enactment of Title VII, it would be the policy of the United States that the number of nationals of the Soviet Union serving as diplomatic or consular personnel in the United States shall not exceed the equivalent number of U.S. nationals serving at posts in the Soviet Union unless the President certified to Congress that allowing additional Soviet personnel to serve in this country would be in the best interests of the United States. Within six months of

enactment of this provision, the Secretary of State and the Attorney General would be required to submit a report to the intelligence and foreign relations committees of Congress setting forth a plan to ensure that the number of Soviet officials does not exceed the limitation. This would give the Executive branch ample time to prepare an approach for attaining equivalence within a reasonable period through attrition of Soviet personnel in the United States, an increase in the number of American personnel in the Soviet Union, or a combination of both.

Section 701 provides that this title of the FY 1986 Intelligence Authorization Act is entitled the "Diplomatic Equivalence and Reciprocity Act of 1985."

Section 702 subsection (a) states the policy of the United States that the number of nationals of the Soviet Union admitted to the United States who serve as diplomatic or consular personnel of the Soviet Union in the United States shall not exceed the number of United States nationals admitted to the Soviet Union who serve as diplomatic or consular personnel of the United States in the Soviet Union unless the President determines and so certifies to the Congress that additional admissions of such personnel would be in the best interests of the United States.

Subsection (b) of this section specifies that the policy in the previous subsection does not apply to dependents or spouses who do not serve as diplomatic or consular personnel.

Section 703 requires that the Secretary of State and the Attorney General, not later than six months after the date of enactment of this title, shall prepare and transmit to the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate and the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence of the House of Representatives a report setting forth a plan for ensuring that the number of Soviet nationals described in Section 702 does not exceed the limitation described in that section.

Section 704 contains definitions for terms used in this title. Subsection (1) provides that the term "diplomatic or consular personnel" shall prefer to the members of the diplomatic mission or the members of the consular post. Subsection (2) refers to the Article 1(b) of the Vienna Convention on Diplomatic Relations, done April 18, 1961, 23 U.S.T. 3227, TIAS No. 7502, for the meaning of the term "members of the diplomatic mission." Under this article, the members of the mission are "the head of the mission and the members of the staff of the mission." Under Article 1(c) of the same Convention, the members of the staff of the mission include "the members of the diplomatic staff, of the administrative and technical staff and of the service staff." Subsection (3) refers to Article 1(g) of the Vienna Convention on Consular Relations, done April 24, 1963, 21 U.S.T. 77, TIAS No. 6820, for the meaning of the term "members of the consular post". Under this article, members of the consular post includes "consular officers, consular employees and members of the service staff." The Committee is aware that the status of U.S. and Soviet official representatives in the other country is also governed by bilateral agreements. It is the intention of the Committee that the definitions contained in Section 704 be applied on their face, except that they may be applied mutatis mu-

tandis in the event their scope is explicated by such agreements. (The Committee does not, however, believe it likely that the terms of any such Executive Agreements of a bilateral nature will significantly depart from the definitions contained in the Vienna Conventions cited.)

The Administration, while taking certain steps to achieve diplomatic equivalence and reciprocity, has not yet adopted a formal policy on this subject. Executive branch agencies have been unwilling to support, in their preliminary responses to Committee inquiries, further legislative actions in the area of diplomatic representation, citing primarily the danger of retaliation if the United States moved unilaterally to reduce the presence of Soviet or other foreign officials in the United States.

The Committee believes, however, that its action when implemented by the Executive branch will not necessarily result in retaliatory action against the best interests of the United States in conducting our diplomatic functions abroad. As the Committee has noted, our key problem in achieving reciprocity with certain countries is the presence of their nationals as employees in our diplomatic facilities located there. In the case of the Soviet Union, over 200 such personnel are retained by the United States government. The Committee is of the view that nearly all these personnel should be replaced as speedily as possible with American employees. The number of American officials in the Soviet Union would have to be increased. If the number of Soviet officials in the United States remained above the number of Americans in the Soviet Union after such measures were taken, then and only then would the Soviet presence here have to be reduced in line with the policy adopted in this provision. The retention of additional American personnel in the Soviet Union could, of course, result in extra expenses for the State Department and other agencies despite the reduction in administrative and support staff hired in the Soviet Union or elsewhere. The Committee believes that, if necessary, the State Department should seek and the Congress should provide sufficient legislative authorization and appropriations to cover such additional expenses in the future.

The Committee's action does not apply either to Soviet officials assigned to quasi-official trade organizations or to Soviet nationals serving as employees of the United Nations. It also does not apply to members of the Soviet Mission to the United Nations. The Committee recognizes that all of these persons potentially pose an intelligence threat to the United States. There is, however, no practical way at present of controlling the numbers of such persons admitted to this country vis-a-vis the number of U.S. officials assigned to posts in the Soviet Union.

The issue of the numbers of U.S. and Soviet diplomatic and consular personnel is, however, an important issue that can and should be addressed independently. The danger to U.S. national security entailed by larger-than-necessary numbers of Soviet diplomatic and consular officials in the U.S. and Soviet personnel at our Embassy and consulates in the Soviet Union requires immediate action. The Committee has been informed that senior policymakers in the Administration are personally committed to resolution of this issue, but the Committee has to date seen little sign of move-

ment from Executive branch agencies to address the disparity in diplomatic and consular representation between the United States and the Soviet Union.

The Committee is prepared to work constructively with the Administration to see to it that his problem is resolved in the most effective way. For the present, however, the Committee sees no convincing reason why it should not be made the explicit policy of the United States government that the number of Soviet diplomatic and consular officials in the United States may not exceed the number of equivalent U.S. officials stationed in the Soviet Union. Accordingly, the Committee favorably reports Title VII of this Act, the Diplomatic Equivalence and Reciprocity Act of 1985, which makes clear that this is the policy of the United States and requires the Secretary of State and the Attorney General to submit within six months a plan for ensuring that this policy is given effect.

## Committee Action

On June 11, 1985, the Select Committee on Intelligence, a quorum being present, approved the bill as amended and ordered it favorably reported by voice vote.

## Evaluation of Regulatory Impact

In accordance with Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee finds no regulatory impact will be incurred in implementing the provisions of this legislation.

## Congressional Budget and Impoundment Control Act

The Committee has complied with Section 403 of the Congressional Budget and Impoundment Control Act of 1974 to the extent possible.

## Changes in Existing Law

In the opinion of the Committee, it is necessary to dispense with the requirements of Section 12 of XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

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